

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 3069 of 2007()

CC.3/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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PETITIONER: ACCUSED

SALIM, AGED 53,
CHERKARA HOUSE, CHEMMAPPALLY,
VADAKKUM MURI P.O., THRISSUR-680 570.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: (STATE & COMPLAINANT)

1. STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. V.B.SREEDEVI, W/O. MURALEEDHARAN,
KARUTHEDATHU HOUSE, P.O.EDAMUTTOM,
THRISSUR DISTRICT.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.3069 of 2007

Dated this the 5th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The complainant alleged that a cheque for Rs.50,000/- was issued by the petitioner to the complainant for refund of treatment fee given to the petitioner for treatment of the ailing son of the complainant. Ext.D1 is not disputed. In fact, the original of Ext.D1 was produced by the complainant.

2. Signature in the cheque is not disputed. Handing over of the cheque is not disputed. That the cheque was for an amount of Rs.50,000/- is again not disputed. What then is the dispute ? The petitioner has a contention that the cheque was handed over not to the complainant but to the brother in law of the complainant. He has a further contention that the name of the payee was entered not by the petitioner but by the complainant or some other persons at his instance. It is his contention now before me that the cheque was obtained by the brother in law of the complainant under duress. There is no allegation of any conduct consistent with such handing over of the cheque under coercion. Notice of demand when received did not evoke any response also. At the fag end of trial, an application was

made by the accused to send Ext.D1 document to the expert. What is the purpose ? Ext.D1 document shows that the cheque for Rs.50,000/- was handed over by the petitioner. That receipt has been acknowledged allegedly by the brother in law of the complainant. The complainant has a case that the cheque was issued to her. It is to resolve this controversy as to whether the cheque was issued by the complainant or to her brother in law by the petitioner that the document Ext.D1 is sought to be sent to the expert.

3. The learned Magistrate by the impugned order rejected the prayer. The petitioner claims to be aggrieved by that order. He has come to this Court with the prayer that powers under Section 482 Cr.P.C may be invoked to interfere with the impugned order.

4. I shall carefully avoid the temptation to discuss the matter in detail on merits, lest it might adversely affect the interests of the petitioner in the course of trial. In the totality of facts and circumstances, I am not at all persuaded to invoke the jurisdiction under Section 482 Cr.P.C. It is the extraordinary inherent jurisdiction which is sought to be invoked. It is not to be invoked as a matter of course. Satisfactory, compelling and exceptional reasons must be shown to exist to justify the invocation of the extraordinary inherent jurisdiction in the course of trial that too against an interlocutory order

like the impugned order. Law frowns upon challenge against interlocutory orders in the course of trial. This policy of the law reflected eloquently under Section 397(2) Cr.P.C which proscribes challenge against interlocutory order in revision. Not that this Court does not have jurisdictional competence to invoke the powers under Section 482 Cr.P.C even in a case where revision may not lie, but I am certainly convinced that this case does not have any features which would justify the invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. The petition must, in these circumstances, fail.

5. The learned counsel for the petitioner submits that there are certain observations made in the impugned order which might suggest that the learned Magistrate has already come to crucial conclusions on disputed facts. I need only mention that no observations in the impugned order or in this order should weigh with the court while considering the contentions on merits at the end of the trial.

This Crl.M.C is dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-

